IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1273 OF 1989

1-A. Sheriar Nariman Irani,)
)
2-A. Jamshyd Naoroji Godrej,)
)
3-A. Phiroze Dinshaw Lam,)
)
4-A. Percy Eruch Fouzdar,)
)
5-A. Anil Gyan Verma,)

6. Kuamas Ardeshir Palia,)
all of Bombay Indian)
Inhabitant being Trustees)
of the Godrej & Boyce Mfg.)
Co.Ltd. Gratuity Trust Fund)
and having their office at)
Pirojshanagar, Vikhroli,)
Bombay - 400 079.).. Petitioners.

Versus

Life Insurance Corporation of India)
a Statutory Corporation,)
constituted under the provisions)
of the Life Insurance Corporation)
of India Act, 1956, having its)
office at Yogakshema,)
Jeevan Bima Marg,)
Bombay - 400 021.).. Respondents.

--
S/Shri D.J.Khambata with K.D.Mehta and A.J.Dhopaskar i/b M/s.Payne & Co. for the petitioners.

Ms Snehal Paranjape with Mayura Maru i/b Little & Co. for the respondents.
--

CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 29TH AUGUST, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. By this petition, the petitioners are seeking a writ of certiorari or a writ in the nature of certiorari and a direction for quashing of communications dated 10th September, 1986, 27th September, 1986, and 10th October, 1987 sent by the respondent - Life Insurance Corporation of India whereby it communicated to the petitioners that the petitioners would be entitled to an amount at the rate of 92.5% only of the cash accumulation policy taken out by the petitioners.

FACTS:

2. Facts of the present case in brief are as under:-

. The petitioners are the trustees of the Godrej & Boyce Manufacturing Company Limited Employees' Gratuity Trust Fund. The respondent is the Life Insurance Corporation of India constituted under the provisions of Life Insurance Corporation Act, 1956. Some-time in the year 1960, the petitioners effected the policy of the Life Insurance Corporation,

hereinafter referred to as the "LIC", which was in the nature of Pure Endowment Assurance by way of a Group Gratuity Policy for the benefit of the employees of the Godrej & Boyce Manufacturing Company Limited, hereinafter referred to as the "Godrej Company". The salient feature of the said policy was that the plan of assurance envisaged a Pure Endowment with return of premiums in the event of death of an employee. The amount which was summed and assured on the date on which the said amount was payable was also assured, and the surrender and paid-up value was fixed at 92.5% of the premiums paid, if the premiums for two years succeeding for payment under the agreement was not paid. Under a schedule, which was appended to the policy, it was expressly agreed that if the pure endowment assurance was discontinued, then in that event the assurance will automatically remain in force as paid-up assurance for a reduced sum assured payable under the same terms and conditions as the original sum assured. Further, in the event of discontinuance of the policy within three years from the effective date, it was agreed that the surrender value in that case would be reduced by 1% of the sum assured under the Assurance.

3. Sometime in the year 1980, according to the

petitioners, they intended to withdraw from the said Group Gratuity Scheme as they were not happy with the yield therefrom and considered that the same was inadequate. After the said fact was made known to the LIC, according to the petitioners, the LIC proposed that the insurance scheme would be converted to a new and more beneficial contribution scheme called as the "Cash Accumulation System." A representation was made that the transfer value which would be available to the employees after the conversion would be more than the surrender value under the Assurance. Further it was represented that the cash accumulation scheme was not an insurance scheme and the beneficiary was entitled to a return on the accumulated sum. This fact however has been denied by the LIC in its affidavit-in-reply.

4. In order to complete the modalities of conversion of the policy from pure endowment policy to a cash accumulation system, there was correspondence between the petitioners and the LIC. In this correspondence, certain clauses in the new scheme were deleted after the negotiations between the parties which are reflected from the correspondence annexed to the petition. Finally, it was agreed between the parties that the pure endowment scheme converted into

a cash accumulation scheme would be brought into effect from 1st December, 1981. It was further agreed that the petitioners would be entitled to continue the scheme for a period of five years and if the petitioners wished to discontinue the same after the said period, the full amount including interest minus actual disbursement against the claim standing to the credit of running account would be refunded. This also is seriously disputed by the LIC.

5. By letter dated 13th February, 1984, the petitioners intimated to the LIC the computation whereby a sum of Rs.481 lacs, as transfer value, would be credited to the running account of the petitioners under the cash accumulation scheme. This fact was confirmed by the LIC by its letter dated 14th March, 1984. From the correspondence and the averments in the petition under reply, it is revealed that there was no dispute regarding the actual amount which was standing to the credit of running account of the petitioners with the LIC.

6. On 29th August, 1986, the petitioners gave a notice to the LIC about their intention to discontinue the cash accumulation scheme as per clause (6) of Part II of the Schedule with effect from 1st December, 1986

and the LIC was called upon to refund to the petitioners the full amount standing to the credit of a running account in the manner specified under the said clause since the scheme was being discontinued after a period of five years from 1st December, 1981, after its conversion from the pure endowment scheme to a cash accumulation scheme.

7. On 10th September, 1986, the LIC requested the petitioners to have discussion with it before the LIC took final decision in the matter. LIC by the said letter informed the petitioners that if the petitioners had finally decided to discontinue the scheme, then the surrender value would be calculated on the scale of surrender value applicable for cash accumulation plan. Thereafter, correspondence started between the parties. The petitioners objected to LIC's letter in which it offered the refund of 92.5% which was contrary to the Endorsement dated 15th September, 1985. Since the LIC disagreed with the contention raised by the petitioners on 18th February, 1988, the petitioners sent a legal notice calling upon the LIC to pay the full amount, as reflected from the running account as on 1st December, 1986. On 12th April, 1988, LIC however alleged that the discontinuance of a scheme and surrender of a scheme

are the two distinct situations, and therefore, the petitioners would be entitled only to 92.5% of the amount. Thereafter, the present petition was filed and the Rule was granted on 21st July, 1989. By way of interim relief, the Court directed the LIC to refund to the petitioners 95% of the amount on production of the relevant documents within a period of four weeks from the date of the order i.e. 21st July, 1989, as there was no dispute regarding the refund of this particular amount.

SUBMISSIONS:

8. Learned counsel appearing on behalf of the petitioners invited our attention to the correspondence between the parties and he submitted that there was no dispute regarding the amount which was credited to the account of an employee in the cash accumulation scheme and only the dispute was in respect of interpretation of the various clauses under the Pure Endowment Scheme which was subsequently converted to a Cash Accumulation Scheme. He submitted that, therefore, the writ petition was maintainable for the purpose of challenging the action of the LIC in not returning the entire amount which was due and payable. He submitted that ordinarily the obligations

which arise out of breach of contract are not amenable to the writ jurisdiction of this Court. He submitted that however the Supreme Court has time and again held that if the dispute raised is bonafide and on the basis of interpretation of the relevant clauses under the agreement, and it could be pointed out that the LIC had acted arbitrarily, then a claim under insurance policy could very well be enforced under Article 226 of the Constitution of India. He relied upon the judgment of the Supreme Court in the case of **ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors.,** reported in (2004)3 SCC 553. He also relied upon the judgments of the Supreme Court in the cases of **Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai & Anr.,** reported in (2004)3 SCC 214, **Life Insurance Corporation of India & Ors. v. Asha Goel (Smt) & Anr.,** reported in (2001)2 SCC 160, and of **Life Insurance Corporation of India & Anr. v. Consumer Education and Research Centre & Ors.,** reported in AIR 1995 SC 1811.

9. He submitted that in view of the ratio laid down by the Supreme Court in the aforesaid judgments, the present writ petition for enforcement of an endowment policy was maintainable and accordingly

direction be given by this Court for quashing the impugned notifications issued by the respondent- LIC to the petitioners and for a further direction directing the LIC to act as per clause (6) of the Schedule of the said Scheme. Learned counsel invited our attention to the Endorsement issued by the respondent by virtue of which the earlier Pure Endowment Life Insurance Scheme had been converted to a cash accumulation scheme for the benefit of the employees of the Godrej Company. He submitted that by virtue of the said Endorsement, substantial amendments and modifications were made. Firstly, the Endorsement deleted the part II, III and IV from the Master Policy which contained detailed provisions of pure Endowment Scheme, and this was substituted by the new Cash Accumulation Scheme which was based on a running account balance. He further invited our attention to the definition of the term "sum assured" which was endorsed in the new scheme and pointed out that the term "sum assured" shall in relation to the accumulated part, be the principal amount assured if the policy is in respect of all members, which shall be equal to the premium paid at any point of time including interest on the said amount so accumulated. He pointed out that in the original endowment policy, however, the term "sum assured" was clearly defined as

a sum assured under the assurance on the entry date or the annual renewal date which would be an amount equal to two-third of a month's salary of the employee, and it was accordingly interpreted for 20 and 25 years of service, respectively. He further pointed out that in the new Scheme, clauses 2, 3 and 4 of Part II were quite significant. The clause (2) thereof provided that the balance of the premium will be held by the Corporation in a running account for the credit of the Grantees. Clause (3) provided that at the end of each accumulation year, the Corporation shall issue a statement showing the sum assured and interest credited and debited to the running account. Clause (4) provided that in case of death of a member, LIC would be liable to pay from the running account necessary amount in respect of the member which would make up the gratuity payable amount to the nominee. Clause (5) also provided that LIC's liability would be limited with the accumulated balance standing to the credit of the Grantees in the running account.

10. Learned counsel for the petitioners drew our attention to the clause (6) of Part II of the original Master Policy and pointed out that under the said policy, it was clearly laid down that in the event of surrender of the said scheme, the employee would be

entitled to get surrender and paid up value immediately on payment of premiums and the surrender value would be 92.5% of the premiums paid. He submitted that, however, the said clause was deleted from the new scheme and it was placed by clause (6) of Part III which specifically stipulated that if the policy is surrendered within a period of 5 years from the date of switch over to cash accumulation system, i.e. 1st December, 1981, the total amount remaining in the running account on the date of surrender shall be subject to deduction of an amount which shall not exceed 1% of the accumulation would become payable by the Corporation to the petitioners, and after a period of 5 years the amount would not be deducted. He submitted that since the petitioners had accepted to switch over the claim from the pure Endowment Scheme to Cash Accumulation Scheme along with the specific modifications and alterations which were made by consent of both the parties and which were specifically incorporated in the new deal, it was not open for the LIC to take a different stance and refuse to honour its commitment as per the agreement which was in force after switching over of the said scheme.

11. He submitted that the LIC was not entitled to rely on the various circulars and the contention

raised by the LIC in its affidavit-in-reply was contrary to the law. Learned counsel appearing on behalf of the petitioners also relied upon the leaflet issued by the LIC in respect of the Group Gratuity (Cash Accumulation) Scheme. He submitted that the stand taken by the LIC and the reliance placed on Section 113 of the Insurance Act, 1938 are clearly unwarranted as the said Section was not applicable to the terms of the Master Policy and the Endorsement. He therefore submitted that necessary directions be issued by this Court for quashing the impugned communications and paying the entire amount due and payable after deducting administration expenses, if any.

12. Learned counsel appearing on behalf of the respondent- LIC has submitted her written arguments. She submitted that the present petition under Article 226 of the Constitution of India is not maintainable, as the same is based on the disputed questions of fact, and purported to enforce an implied term arising out of an Endorsement based upon a contract of insurance. She submitted that it was well settled that the writ jurisdiction of this Court may not be exercised in the matters arising out of contracts and that the petitioners have efficacious and alternative

remedy to file a suit under the civil law. Learned counsel further submitted that there was inordinate and unexplained delay in filing the petition and the petitioners were informed by the LIC way back in the year 1986 that the surrender value of the petitioners' policy would be computed at the rate of 92.5% of the amount standing in the credit of the running account of the petitioners. The petitioners, however, had approached this court in the month of April, 1989, and therefore, the petition is liable to be dismissed on the ground of delay and laches. She further submitted that the petition is based on the several disputed questions of fact which could not be decided unless the evidence is led. She submitted that certain concessions and admissions were made by the Managing Director of the respondent-LIC who was no longer in the service of the respondent.

13. She submitted that the Endorsement issued to the petitioners in terms stated that the policy carried a surrender value of 92.5% of the premium, if two years period of amount is paid. She further submitted that in fact the LIC had given a fair offer of switch over to the petitioners and further a sum of Rs.16 lakhs was credited in the account of the petitioners on transfer by the petitioners to the cash

accumulation system and further switch over was permitted with retrospective effect from 1st December, 1981. She submitted that therefore the higher rate of interest was consequently extended with retrospective effect to the petitioners. She further submitted that the Endorsement clearly stipulated the surrender value being effected within a period of five years from 1st December, 1981 and therefore any surrender on completion of five years or thereafter was not a part of the Endorsement. She submitted that therefore a circular issued by the Corporation would be applicable in case of surrender of the Scheme after five years. She submitted that therefore under the Scheme and as per the provisions of Section 113 of the Insurance Act, the petitioners are not entitled to get the entire amount which is accumulated to the credit of the running account. She further submitted that the petitioners also in any case were not liable to get interest at the rate of 18% per annum or any other rate claimed by the petitioners. Learned counsel thereafter invited our attention to the compilation of documents which included a circular issued by the LIC to all its zonal offices in respect of Group Gratuity (Cash Accumulation) Scheme. The clause (2) of the said circular stated that all cases of surrender of policy should be referred to Central office for

ascertaining the amount of surrender value. She relied upon the circular issued by the LIC to all its zonal offices for determination of life cover and OYRTA premium under the Group Gratuity Scheme in the year 1986. She also invited our attention to the extract from the book on Elements of Actuarial Science recommended for reading as part of the departmental examination on the inquiries of LIC. She lastly relied upon the P & Gs Training Manual issued by the LIC and while inviting our attention to Section 113 of the Insurance Act, and strenuously urged that in all the cases of policy of pure endowment scheme or cash accumulation scheme, in the event of surrender of any such policy prematurely, the surrender value would be calculated as per the provisions of Section 113 and the various circulars which were issued from time to time, and in the present case, since the petitioners had surrendered the scheme within five years, the said provision of section 113 of the Insurance Act was applicable.

FINDINGS AND CONCLUSION :

14. We have heard learned counsel for the petitioners and the respondents at length. We have given our anxious consideration to the submissions

made by learned counsel for both the parties in the present case. The petitioners have invoked writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, for the purpose of quashing the impugned notifications issued by the LIC and for an appropriate direction directing them to abide by the terms and conditions of the Endorsement between the parties.

15. The first question which falls for our consideration is whether a writ petition is maintainable for the purpose of issuance of direction to the LIC in respect of a scheme and contract entered into between the parties. The Supreme Court in catena of judgments has held that such a petition would be maintainable and the LIC would be amenable to the writ jurisdiction of this Court. In the case of **L.I.C. of India & Anr. v. Consumer Education and Research Centre & Ors.(Supra)**, the Supreme Court in paragraph 28 of the judgment, after referring to the various judgments of the Supreme Court, has observed as under:-

> "The arms of the High Court is not shackled with technical rules or of Procedure. The actions of the State, its instrumentality, any

public authority or person whose actions bear insignia of public law element or public character are amenable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of the appellants bear public character with an imprint of public interest element in their offers with terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we have no hesitation to hold that the writ petition is maintainable to test the validity

> of the conditions laid in Table 58 term policy and the party need not be relegated to a civil action."

16. The Supreme Court in the case of **ABL International Ltd.'s case (supra)** held that in an appropriate case, the writ court has jurisdiction to entertain a writ petition involving disputed questions of fact and that there is no absolute bar for entertaining a writ petition even if the same arises out of contractual obligation and/or involves some disputed questions of fact. The Supreme Court in paragraph 19 of the said judgment has observed as under:-

> "Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an

> appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact."

17. Similarly, in the case of **Life Insurance Corporation of India & Ors. v. Asha Goel (Smt) & Anr. (supra),** while considering the question of maintainability of the writ petition in respect of enforcement of contractual right as also the disputed questions of fact, the Supreme Court in paragraph 10 has observed as under:-

> "Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. Therefore, it cannot be laid down as a general proposition of law that in no case the

High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors like, whether a writ petition is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues, the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions

of facts. The courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination f which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution, is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternative forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to by-pass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Courts have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligations; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of

enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts."

18. The Supreme Court in **Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai & Anr,** reported in (2004)3 SCC 214, wherein the petitioner challenged the exorbitant increase of rent by the Board of Trustees, Port of Mumbai, held that the writ petition was maintainable.

19. From the conspectus of judgment of the Supreme Court referred hereinabove, there is no doubt that the writ petition for enforcement of contractual obligation is not completely barred but is maintainable in certain cases. In the present case, short controversy between the parties is in respect of the interpretation of certain clauses of the Endorsement. There is no dispute regarding the existence of the said clauses in the agreement. According to the petitioners, on a fair and proper interpretation of the said clauses, it was eminent that the Corporation was duty bound and was under a legal obligation to honour its commitment and as

reflected from the said clauses, to pay the entire sum which was due and payable and accumulated in terms of the running account, and according to the LIC, the concept of surrender of a policy and discontinuance was entirely distinct and separate and as per the provisions of Section 113 of the Insurance Act, the petitioners were entitled to get surrender value as calculated according to the Act and Circulars issued by the LIC. Since this is the dispute between the parties and there is no dispute regarding the amount which was lying in the running account, in our view, the respondent/LIC is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

20. Before deciding the controversy between the parties, it would be relevant to take into consideration a few admitted facts. It is an admitted position that sometimes in the year 1960, the petitioners had initially taken the Master Policy of the LIC which was in the nature of Pure Endowment Assurance by way of Group Gratuity Policy for the benefit of the eligible employees of the Godrej Company. Part II of the Schedule contained assurances given by the LIC in respect of each member. In the said Part II, the surrender and paid up value were

specifically mentioned. Thereafter, in the year 1980, the petitioners wanted to withdraw from the said Group Gratuity Scheme and therefore the respondent-LIC proposed that instead of withdrawing from the said Scheme, the LIC was willing to permit the petitioners to convert the Pure Endowment Insurance Scheme to a beneficial contribution scheme towards Cash Accumulation Scheme. It is an admitted position that finally the LIC permitted the petitioners to convert the scheme from Pure Endowment Assurance to Cash Accumulation Scheme.

21. In this context, in view of the controversy, it would be relevant therefore to take into consideration the correspondence between the parties in order to see that what had transpired between the parties and what was agreed finally as per the Endorsement. By letter dated 28th March, 1983, which was addressed by the LIC to the petitioners, the LIC informed the petitioners that as the petitioners did not claim moneys payable in respect of the employees who were retiring or leaving the service immediately after their exit, the LIC was prepared to offer an adjustment to the transfer value to the extent of Rs.16 lakhs, as on 1st December, 1981. On 19th April, 1983, the petitioners addressed a letter to the LIC

stating that the decision whether to continue with the said scheme or switch over to the new scheme was a major policy which could be taken only after the LIC furnished the clarifications which were demanded by the petitioners. On 23rd May, 1983, a letter was addressed by the LIC to the petitioners stating that the LIC's offer of a further adjustment of Rs.16 lakhs to the transfer value as on 1st December, 1981 was made on account of special liberalisation of LIC's normal surrender value basis specially done for the said particular case. In response to the said letter, the petitioners by their letter dated 3rd June, 1983 informed the LIC that for a proper appreciation of the Cash Accumulation System, the petitioners would like to know the terms and conditions governing the system and more particularly the penalty, if any, imposable in the event of discontinuance of the said system. From the aforesaid correspondence, it is abundantly clear that, right from the inception it was the main contention of the petitioners that before discontinuance of the Group Gratuity Scheme, the petitioners wanted to know what would be the amount of surrender value payable to them and the penalty which could be imposed and they were anxious to know what the LIC had their in mind before the petitioners decided to take a major policy decision. Thereafter,

again by the letter dated 4th July, 1983, the petitioners requested the LIC that surrender value would be made known to them as also the terms and conditions governing the scheme. The LIC by its letter dated 19th July, 1983 informed the petitioners that the LIC had already taken up the calculation of wholesale surrender value available under the said scheme. Again, there was further correspondence between the parties which was not disputed and the petitioners had demanded reply to the various queries of the petitioners. Then, by the letter dated 10th October, 1983, again the petitioners reiterated their request to the LIC for details as to the terms and conditions governing the new Cash Accumulation Scheme, if any, in the event of discontinuance. The petitioners noted in the said letter that in the event of discontinuance of the existing scheme, an aggregate amount of Rs.4,30,73,097.86 ps. with interest would be due and payable to the petitioners. The petitioners again reminded by their letter dated 8th November, 1983 and pointed out to LIC that the wholesale surrender value of the petitioners' existing master policy was considerably less than the transfer value quoted by the respondent-LIC and there is a difference of approximately Rs.100 lakhs between the figures of surrender value and the transfer value.

22. By letter dated 12th December, 1983, LIC gave reply to the petitioners' letter dated 8th November, 1983. The said letter refers to the leaflet on the Group Gratuity (Cash Accumulation) Scheme and also to LIC's letter dated 18th February, 1983 and gives salient features of the Cash Accumulation Scheme. The LIC mentioned in paragraph 3 of the said letter as under.

> "You had raised a point about the amount available in the event of your leaving the Cash Accumulation arrangement within five years of conversion. We would inform you that you will get the initial transfer value and the initial contribution at the time of transfer together with contributions paid by you after conversion net of any payments made by us in respect of withdrawals and retirements with a rate of interest which shall be 1% lower than the rate of interest last declared under the Cash Accumulation System. This reduction will apply for a period of 5 years."

23. Thereafter, again the petitioners wrote a

letter to the LIC dated 26th December, 1983 informing that the LIC had not forwarded its leaflet on Group Gratuity Cash Accumulation Scheme and further informing that the petitioners wanted to know the amount available to them in the event of their leaving the Cash Accumulation Scheme. The LIC informed the petitioners by its letter dated 4th January, 1984 that the entire details were given by the LIC under its letter dated 18th February, 1983 about the leaflet on Group Gratuity and Cash Accumulation System. Finally, the LIC by its letter dated 23rd January, 1984 informed the petitioners that the LIC had agreed to the conversion of their Gratuity Scheme to a Cash Accumulation System with effect from 1st December, 1981 on the condition that the petitioners should give the LIC an assurance that the Scheme will be continued for a minimum period of three years i.e. upto 1st December, 1986. Along with the said letter, the drafts of the Rules and Endorsement were enclosed. On 13th February, 1984, the petitioners intimated to LIC the computation whereby a sum of Rs.481 lakhs was the transfer value to be credited to the petitioners' running account under the Cash Accumulation System. In the said letter, it is specifically mentioned that the petitioners objected to clause (4) of Part III to the Schedule (Annexure -C) annexed to LIC's letter

dated 23rd January, 1984, pursuant to the part of the draft Endorsement in which it was mentioned that in the event of discontinuance, balance in the running account payable on the date of surrender shall be subject to the deduction of such sum as shall be decided by the Corporation having regard to the number of years for which the policy is enforced. LIC by its letter dated 14th March, 1984 confirmed and agreed that the endowment which was placed on the master policy would be revised and the revised version of the endorsement to be placed on the master policy containing the provision for penalty, if the Scheme is discontinued within a period of five years, was sent. LIC also confirmed that switch over would be given effect from 1st December, 1981 and the additional amount of Rs.16 lakhs over and above the surrender value would be taken into consideration for getting the transfer value. LIC further confirmed that the balance amount in the petitioners' running account as on 31st December, 1983 would be approximately Rs.452 lakhs.

24. From the aforesaid admitted correspondence, it can be seen that there never was any dispute regarding the figures which were exchanged by the parties in their correspondence and the LIC was very well aware

that the petitioners had taken a specific objection to the inclusion of clause in the new scheme regarding discontinuance of a policy and penalty which would be levelled and particularly the determination of surrender value which would be decided by the Corporation. LIC in turn in view of this objection has agreed to a new revised clause which envisaged that if the policy was surrendered within a period of five years and it would be subject to the deduction of an amount not exceeding 1% of the accumulation. In view of this correspondence, there was clear understanding between the parties that if the policy is discontinued after a period of five years, no penalty would be imposed.

25. This fact is further established from the further correspondence. By the letter dated 29th March, 1984, the petitioners informed the LIC that they were happy to note that LIC had agreed to switch over the scheme with retrospective effect from 1st December, 1981 and that the balance in the petitioners' account as on 31st December, 1983 would be approximately Rs.452 lakhs. It was further specifically mentioned in the said letter that there would be no deduction of administrative expenses and that the clause relating to discontinuance of premium

would not apply in case the arrangement with LIC was discontinued after a period of five years. LIC, in reply, by its letter dated 14th April, 1984 informed the petitioners and confirmed the fact that there will be no appropriation of administrative expenses and also confirmed the views of the petitioners in the said letter.

26. Thereafter, a Draft of the Fifth Deed of Variation was exchanged between the parties and by the letter dated 27th June, 1984, the petitioners informed the LIC that the revised version of Endorsement No.1 to the Master Policy was acceptable to the petitioners and along with the said letter, a cheque for an amount of Rs.48,33,000/- was enclosed. On this correspondence as also on the new version of the endorsement, there was no dispute between the parties regarding consequences of discontinuance of the Scheme after a period of five years.

27. On the examination of the relevant clauses in the new scheme, it is clear that the LIC had specifically agreed that no penalty would be imposed if the scheme is discontinued after a period of five years. Under these circumstances, we are of the view that it is not open for the LIC to interpret the said

clause in a different manner.

28. It is not possible to accept the submissions made by learned counsel appearing for the respondents. Section 113 of the Insurance Act, 1938, which deals with the surrender values on policy, would not be applicable to the facts of the present case since the LIC, after negotiating, had specifically admitted upon certain terms and conditions which would follow as a consequence of discontinuance of the policy after five years. Section 113 of the Insurance Act is applicable usually in respect of the insurance scheme or a Cash Accumulation Scheme. In the present case, the LIC had agreed and permitted the petitioners to convert and switch over the Scheme from the Group Gratuity Scheme to Cash Accumulation Scheme on certain terms and conditions which had been negotiated and subsequently the Corporation had acceded to the objections which were raised by the petitioners in respect of penalty or in respect of determination of surrender value by the Corporation in the event of discontinuance of the Scheme after five years and accordingly the changes were made, certain clauses were altered, and the Schedules 2, 3 and 4 from the earlier Scheme which contained surrender value were specifically dropped. Under these factual circumstances, it would not be

open for the Corporation to rely upon Section 113 of the Insurance Act or the circulars which were applicable to any other usual claims under the Cash Accumulation System. The submission made by learned counsel for the respondents, that the circulars which were issued by the Corporation have the statutory force in view of Section 6 and, therefore, the said circulars are clearly applicable to the facts of the present case also cannot be accepted. There cannot be any manner of doubt that Section 6 of the said Act specifically lays down that the Corporation shall conduct its affairs as a business and primary intention in conducting its affairs is to accrue and earn profits. It is also no doubt true that the circulars which were issued from time to time by the Corporation would have a statutory force provided they are within the four corners of Section 6. However, the circulars on which the reliance is placed by the Corporation are not applicable to the facts and circumstances of the present case, as enumerated in the forgoing paragraphs. The Corporation, therefore, cannot hide behind these circulars which are issued in respect of formal policies and refuse to honour its commitments which were negotiated between the parties and were accepted by the respondents knowing fully well the consequences which would follow as a result

of the said clause in the Endorsement. Thus, it is not open for the Corporation to refuse to honour its legal commitments by putting up the defence as is being done in this case.

29. So far as the reference which is made by learned counsel appearing on behalf of the respondents on the various journals and manuals issued by the Corporation, for the aforesaid reasons, journals and manuals would not be of any assistance to buttress the case of the respondents.

30. Under these circumstances, we have no hesitation in accepting the submissions made by counsel for the petitioners. The petition therefore is allowed. The impugned notifications at Exhibits J, K and R are hereby quashed and set aside, and the respondents are directed to pay the amount which is due and payable as calculated by the parties as per the contract within a period of 12 weeks from today and thereafter with interest at the rate of 10% per annum. The rule is made absolute in above terms with no order as to costs.

28. At this stage, learned counsel for the respondents pray for stay of execution of this order.

Learned counsel appearing for the petitioners has opposed the application for stay. The application for stay of this order is rejected.

(R.M.S.KHANDEPARKAR, J)

(V.M. KANADE, J)